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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/247,418      | 02/10/1999  | HOLGER EGGERS        | MO-5041/WW-5        | 7618             |

7590 03/21/2002

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| EXAMINER |
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KRUER, KEVIN R

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

1773

DATE MAILED: 03/21/2002

19

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/247,418

Applicant(s)

EGGERS ET AL.

Examiner

Kevin R Kruer

Art Unit

1773

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 March 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 28 December 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 2-10 and 12-31.

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 2-10 and 12-31.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

***Advisory Action***

Applicant's arguments filed March 8, 2002 have been fully considered but they are not persuasive.

Applicant argues that the 112, 2<sup>nd</sup> paragraph should be withdrawn. Specifically, Applicant argues that one of ordinary skill in the art would have absolutely no doubt as to the meaning of the "weight per unit area" limitation of the claim. The examiner respectfully disagrees. Neither the claim nor the original disclosure teaches what "area" the calculation is based upon. While Applicant's calculation in Paper #8 was calculated based upon the area of a plane horizontal to the plane in which the film was extruded (the examiner will call this the "X-Y" plane), the claim is not limited to the area associated with this plane. As the examiner demonstrated in Paper #10, the same film would have a different "weight percentage per unit area" if the plane upon which the calculation was based upon was vertical to the extrusion plane. Applicant argues that the calculations of the examiner's example contained mixed units. Applicant is in error with this assumption. The examiner merely did not show the stoichiometric conversion of the meter measurement to cm.

With respect to the rejection of claims 31, 2, 3, 6-10, 12, 15, 17, 18, 19, 20, 23, and 25 as unpatentable over Dobreski, Applicant argues that Dobreski does not teach that the MFR of the "outer layer" should be less than the MFR of the "inner layer." Applicant makes a similar argument with respect to Chum. Specifically, Applicant argues that the recited "outer" ply of independent claim 31 is clearly understood to be the "surface ply on the heat sealable surface of the sealing film." However, such a

limitation is not recited in the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the claimed outer ply is the "surface ply on the heat sealable surface of a sealing film") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Even if the claimed specified that the outer ply is on the "surface ply on the heat sealable surface of a sealing film," such a limitation would not overcome the applied art. Specifically, the claims are directed to a two-layer structure wherein one layer has a higher MFR than the second layer. Without adding further structure to the claimed laminate, the claimed laminate is not distinguished from a two-layer film taught in the prior art. Therefore, the rejections based upon Dobreski and Chum are maintained for the reasons of record.

Applicant further argues that there is no evidence of record to support the examiner's conclusion that metallocene catalyzed ethylene compositions have "better compositional distribution," etc. The examiner respectfully disagrees. Specifically, Hodgson teaches the benefits of metallocene catalyst. Specifically, Hodgson teaches the benefits of metallocene catalyst in ethylene heat seal compositions (col 2, line 65+).

With respect to the rejection based upon Paleari in view of Hodgson, Applicant argues that there is motivation to utilize the composition taught in Hodgson as the heat sealable layer of the laminate taught in Paleari. The examiner respectfully disagrees.

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Paleari teaches that the heat sealable layer of the laminate may comprise the heat sealable layer taught in Hodgson (col 6, line 29).


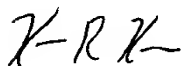
Applicant further argues that there is nothing in the prior art that would have motivated one of ordinary skill in the art to select a heat sealable ply taught in Hodgson with a melt range of 0.5-0.9g/min. Applicant has misinterpreted the rejection. The heat sealable resin taught in Hodgson was utilized to read on Applicant's claimed "inner" (aka high MFR) layer. Thus, the MFR of the heat seal layer must be greater than the MFR of the EVA layer taught in Paleari to meet the limitations of independent claim 31. As pointed out in the original rejection, this limitation is met. Specifically, the melt flow of the preferred heat seal composition taught in Hodgson (1.0g/10min) is three times greater than the preferred melt index of the inner layer composition (0.35g/min).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 703-305-0025. The examiner can normally be reached on Monday-Friday from 7:00a.m. to 4:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (703) 308-2367. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0661.

KRK



Pau! Thibodeau  
Supervisory Patent Examiner  
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